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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,042	08/19/2004	Robert T. Uthe	014682.000008	5041
44870 7590 09/05/2008 MOORE & VAN ALLEN, PLLC For IBM P.O. Box 13706 Research Triangle Park, NC 27709			EXAMINER ANDREWS, LEON T	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 09/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,042	<b>Applicant(s)</b> UTHE, ROBERT T.	
	<b>Examiner</b> LEON ANDREWS	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

- Applicant's Amendment filed June 19, 2008 is acknowledged.
- **Claims 18-26** were cancelled.

1. **Claims 1-17** are rejected under 35 U.S.C. 102 (b) as being unpatentable by **Richter et al.** (Pub. No.: US 2002/0194251 A1).

**Regarding Claims 1, 8 and 12**, Richter et al. discloses a method (methods, paragraph [0009], page 2, line 1) to evaluate utilization of a plurality of resources (Fig. 2, resources 250; Fig. 5, 115, resources required to process identified by evaluating request) linked by segments (Fig. 2, links between resources 250), comprising:

tracking a sequence of utilization of the plurality of resources (tracking resource utilization in relation to maximum resource utilization according to one or more service policies (requests) that guarantees resource availability to satisfy such policies, paragraph [0020], page 4, lines 14-20; tracking total resource consumption based on resource utilization values whereby at least one of the resource utilization values may be associated with a particular task (message), paragraph [0025], pages 4 and 5, lines 10-15) in responding to a request or a set of requests; and

determining and representing a quantity of occurrences of each segment linking a pair of resources (polling each of the required resources to process a request occurring in parallel or serial manner, paragraph [0217], page 23, lines 8-12) in the sequence; and

determining and representing a time duration since each resource in the sequence was last utilized (within a predefined amount of time (last utilized) resources will be available, paragraph

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[0217], page 23, line 10-11; determining whether adequate resources will be available within a specific time (last utilized), paragraph [0223], page 24, lines 9-11; Fig. 19, perform resource usage accounting 6230) .

**Regarding Claims 2, 11 and 14**, Richter et al. discloses the method (methods, paragraph [0009], page 2, line 1), further comprising:

means (Fig. 1A, content delivery system 1010) for representing each resource (Fig. 1A, representation of components of a content delivery system, paragraph [0032], page 5, lines 1-2) by a predetermined symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070, representation of components (symbols) of a delivery system, paragraph [0032], page 5, lines 1-2); and

means (Fig. 1G, network 1030) for representing each segment between resources by a line (Fig. 1G, 1023) between corresponding resource symbols (Fig. 1G, network 1030),

wherein each line has a selected line width (Fig. 12, bandwidth for a connection, paragraph [0007], page 2, line 12) corresponding to the quantity of occurrences (Fig. 19, request is evaluated to identify the required resources 6115, and the steps (occurrences) will be repeated and the request will be maintained in the waiting queue 6220 until the request has expired, paragraph [0518], page 61, lines 3-17) of the segment in responding to the request (Fig. 19, request 6105) or set of requests.

**Regarding claim 3**, Richter et al. discloses the method of claim 1, further comprising representing a time duration since each resource in the sequence was last utilized (within a

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predefined amount of time (last utilized) resources will be available, paragraph [0217], page 23, line 10-11).

**Regarding Claim 4**, Richter et al. discloses the method of claim 1, further comprising:

representing each resource (Fig. 1A, representation of components of a content delivery system, paragraph [0032], page 5, lines 1-2) by a predetermined resource symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070 representation of components (symbols) of a delivery system, paragraph [0032], page 5, lines 1-2); and

presenting each resource symbol at a predetermined level (Fig. 1A, 1030A, 1040A, 1050A, 1060A, 1070A) or degree of translucency corresponding to a time duration since the resource was last utilized (within a predefined amount of time (last utilized) resources will be available, paragraph [0217], page 23, line 10-11).

**Regarding claim 5**, Richter et al. discloses the method (methods, paragraph [0009], page 2, line 1) of claim 1, further comprising:

representing each resource (Fig. 1A, representation of components of a content delivery system, paragraph [0032], page 5, lines 1-2) by a predetermined resource symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070, representation of components of a delivery system, paragraph [0032], page 5, lines 1-2); and

presenting each resource symbol at a predetermined level (Fig. 1A, 1030A, 1040A, 1050A, 1060A, 1070A) or degree of translucency corresponding to a number of times the resource was utilized in responding to the request (Fig. 19, request 6105) or set of requests.

**Regarding claims 6, 7 and 17,** Richter et al. discloses the method further comprising continuing to sequentially store the resource identification, segment or path information between sequential resources and time of access for each resource in the sequence until one of a predetermined time period expires (request has expired via the expiration of automatic timer or client termination, Paragraph [0518], page 61, lines 17-18), the sequence is completed (Fig. 19, put request in dispatch queue 6260), the request or set of requests is satisfied (Fig. 19, dispatch request 6270), or a request (Fig. 19, receiving a request for content 6105, paragraph [0518], page 61, lines 3-4) for a resource utilization diagram (Fig. 18) is received.

**Regarding claims 9, 15 and 16,** Richter et al. discloses the method further comprising representing each resource (Fig. 1A, representation of components of a content delivery system, paragraph [0032], page 5, lines 1-2) by a predetermined resource symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070, representation of components of a delivery system, paragraph [0032], page 5, lines 1-2) and wherein representing a time duration (estimated time until the availability of adequate resources to a request, paragraph [0223], page 24, lines 6-8) since each resource was last utilized comprises presenting each resource symbol at a predetermined level (Fig. 1A, 1030A, 1040A, 1050A, 1060A, 1070A) or degree of translucency corresponding to the time duration (estimated time until the availability of adequate resources to a request, paragraph [0223], page 24, lines 6-8) since the resource was last utilized (Fig. 5, 120, poll resources required to process request to determine availability).

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**Regarding claims 10 and 13**, Richter et al. discloses the method further comprising representing in a resource utilization diagram (Fig. 18) the quantity of occurrences of each segment linking resources in the sequence (Fig. 19, request is evaluated to identify the required resources, 6115, and the request is kept in the queue, 6220 and the process is repeated (occurrences) until the condition, 6200 is met).

**Regarding claim 14**, Richter et al. discloses the method (methods, paragraph [0009], page 2, line 1) of claim 12, further comprising:

representing each resource (Fig. 1A, representation of components of a content delivery system, paragraph [0032], page 5, lines 1-2) by a predetermined resource symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070, representation of components of a delivery system, paragraph [0032], page 5, lines 1-2); and  
representing each segment by a line between (Fig. 1G, 1023) the resource symbols corresponding to the pair of resources (Fig. 2, resources 250), wherein each line has a selected line width (Fig. 12, bandwidth) corresponding to the quantity of occurrences of the segment in responding to the request (Fig. 19, request 6105) or set of requests.

#### ***Citation of Pertinent Prior Art***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Jackson et al.** (Pub. No.: US 2002/0152305 A1) discloses systems and methods for resource utilization analysis in information management environments

*Response to Arguments*

3. Applicant's arguments filed June 19, 2008 have been considered as follows:

- In the remarks on page 7 of the amendment, applicant contends that in claim 1, Richter et al. does not teach, disclose or suggest tracking a sequence of utilization of the plurality of resources in responding to a request or set of requests, and representing a quantity of occurrences of each segment linking resources in the sequence. Accordingly, applicant requests the withdrawal of the 102 rejection.
- The examiner respectfully contends that Richter et al. discloses (tracking resource utilization in relation to maximum resource utilization according to one or more service policies (requests) that guarantees resource availability to satisfy such policies, paragraph [0020], page 4, lines 14-20; tracking total resource consumption based on resource utilization values whereby at least one of the resource utilization values may be associated with a particular task (message), paragraph [0025], pages 4 and 5, lines 10-15). Thus, the 102 rejection will not be withdrawn.



- In remarks on page 8 of the amendment, applicant contends that in claim 2, Richter et al. does not disclose representing each resource by a predetermined resource symbol, and representing each segment between a pair of resources in the sequence by a line between the resource symbols corresponding to the pair of resources. Accordingly, applicant requests the withdrawal of the 102 rejection.
- The examiner respectfully contends that Richter et al. discloses predetermined symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070, representation of components (symbols) of a delivery system, paragraph [0032], page 5, lines 1-2), and representing each segment between resources by a line (Fig. 1G, 1023) between corresponding resource symbols (Fig. 1G, network 1030). Thus, the 102 rejection will not be withdrawn.
- In remarks on page 8 of the amendment, applicant contends that in claim 3, Richter et al. does not disclose representing a time duration since each resource was last utilized. Accordingly, applicant requests the withdrawal of the 102 rejection.
- The examiner respectfully contends that Richter et al. discloses within a predefined amount of time (last utilized) resources will be available, paragraph [0217], page 23, line 10-11. Thus, the 102 rejection will not be withdrawn.

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- In remarks on pages 8-9 of the amendment, applicant contends that in claim 4, Richter et al. does not teach or disclose representing each resource by a predetermined resource symbol, and presenting each resource symbol at a predetermined level or degree of translucency corresponding to a time duration since the resource was last utilized. Accordingly, applicant requests the withdrawal of the 102 rejection.
- The examiner respectfully contends that Richter et al. discloses predetermined symbol (Fig. 1A, network 1030, storage 1040, transport 1050, system 1060, application 1070 representation of components (symbols) of a delivery system, paragraph [0032], page 5, lines 1-2) within a predefined amount of time (last utilized) resources will be available, paragraph [0217], page 23, line 10-11. 'Degree of translucency' was optional with the use of "or". Thus, the 102 rejection will not be withdrawn.
- In remarks on page 9 of the amendment, applicant contends that claims 2-7 include all the features of claim 1, claim 8 recites similar features of claims 1 and 4, claims 9-11 include all the features of claim 8, claim 12 recites similar features to claims 1 and 8 and claims 13-17 depend from claim 12. Therefore, applicant requests the withdrawal of the 102 rejection for claims 2-17.  
  
Applicant further contends that all the claims are in condition for allowance and requests the withdrawal of the rejections and the allowance of the claims.

- The examiner respectfully contends that Richter et al. discloses the limitations of the claims and the rejections will not be withdrawn. Further, the claims will not be allowed.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Andrews whose telephone number is (571) 270-1801. The examiner can normally be reached on Monday through Friday 7:30 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rao S. Seema can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LA/la

August 27, 2008

/Kevin C. Harper/

Primary Examiner, Art Unit 2616